



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 9, 1993

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR93-080

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19013.

The Texas Department of Transportation received an open records request for certain records that you contend may be withheld from the public pursuant to section 3(a)(3) of the Open Records Act. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 3(a)(3); the requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

We also note that because section 3(a)(3) protects only information that is relevant to the litigation, this section is inapplicable to documents that the presiding judge has ruled undiscoverable because they lack relevance to the lawsuit. Finally, the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-080.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 19013

Enclosures: Submitted documents

cc: Mr. Gary L. Willis
Gary L. Willis & Associates
370 Park Springs Place
4025 Woodland Park Boulevard
Arlington, Texas 76013
(w/o enclosures)